JAMES SIMS

IBLA 74-53 Decided August 22, 1979

Appeal from decision of the Fairbanks District Office, Bureau of Land Management, rejecting Native allotment application F-1657.

Affirmed.

1. Alaska: Generally -- Alaska: Headquarters Sites -- Alaska: Homesites -- Alaska: Trade and Manufacturing Sites

   Any right which may be gained under a notice of location for a trade and manufacturing site or a homesite, as required by the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1976), is personal to the party filing the notice.

2. Alaska: Generally -- Alaska: Possessory Rights -- Alaska: Trade and Manufacturing Sites

   A trade and manufacturing site notice of location not supported by actual settlement and occupancy authorized by 43 U.S.C. § 687a (1976) does not change the status of the public lands.

3. Alaska: Native Allotments

   Selection of the land by the State of Alaska under authority of the Statehood Act in 1962, effectively kept the land closed to the initiation of rights under the Native Allotment Act at all times during the period from 1962 to the revocation of the Allotment Act on Dec. 18, 1971, by sec. 18 of the Alaska Native Claims Settlement Act.

APPEARANCES: James Sims, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

James Sims has appealed from a decision dated June 29, 1973, of the Fairbanks District Office, Bureau of Land Management (BLM), rejecting his Native allotment application F-1657. 1/

The application was filed pursuant to the Act of May 17, 1906 (Alaska Native Allotment Act), 34 Stat. 197, as amended by the Act of August 2, 1958, 70 Stat. 954, 43 U.S.C. §§ 270-1 to 270-3 (1970), repealed by the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (1976).

Appellant's application was filed with BLM on July 18, 1968. Appellant claimed occupancy from June 1964, and improvements of a milled log house, water well, sewer system, and gravel driveway.

BLM rejected the application on the ground that on October 11, 1962, the State of Alaska had filed an application to select all unsurveyed lands in T. 6 S., R. 8 W., Fairbanks meridian (encompassing the applied for land), pursuant to the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, 340, 48 U.S.C. Prec. § 21 (1970). The decision appealed from states that between October 2 and 30, 1963, the State of Alaska had legal notice published of the subject lands pursuant to 43 CFR 2627.4(c) (October 1972) which stated:

> (c) Publications and protests. (1) The State will be required to publish once a week for five consecutive weeks in accordance with 1824.4 of this chapter, at its own expense, in a designated newspaper, and in a designated form, a notice allowing all persons claiming the land adversely to file in the appropriate office their objections to the issuance of patent or certification of lands selected under the regulations of this part. A protestant must serve on the State a copy of the objections and furnish evidence of service to the appropriate land office.

In his statement of reasons, appellant suggests that Alaska's application to select was void because the lands involved were subject to a prior application for a trade and manufacturing site and that these lands were therefore not vacant and unappropriated at the time of the State selection.

Appellant further asserts that Alaska did not comply with the publications requirement since it allegedly "failed to publish once a week for five consecutive weeks as required by departmental regulation, 43 CFR 2627.4(c) and 43 CFR 1A 24.4." [sic].

1/ Action on this appeal was stayed pending rulings on the general subject matter of Native allotment applications from the United States Court of Appeals in Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), and Pence v. Andrus, 586 F.2d 733 (9th Cir. 1978).

Appellant also contends that he fulfilled the use and occupancy requirements under the Alaska Native Allotment Act and has submitted the affidavits of witnesses attesting to his use and occupancy which he asserts, commenced on or about June 6, 1964.

Appellant does not elaborate on the trade and manufacturing site. He does say, however, that he is a party "affected by the Secretary's decision A-31017 (Seldon H. Klinke) of February 12, 1970 (Fairbanks 028081)" and that "[he] and others, are presently negotiating with the State of Alaska, Department of Natural Resources, in an attempt to reach an equitable settlement of disputed claims to the subject lands." Seldon H. Klinke, supra, was remanded for a hearing to determine whether Klinke, who had filed a trade and manufacturing site notice of location in 1961, was entitled to purchase the site pursuant to 43 U.S.C. § 687(a) (1976). Following hearings, the Administrative Law Judge (then Hearing Examiner) found that pursuant to a purchase and sale agreement with the former wife of Seldon H. Klinke, James Sims was claiming 3 1/2 acres within the Klinke trade and manufacturing site. Sims testified before Judge Mesch that he moved onto the property in 1964, built a house of milled logs, a garage, and gravel driveway as well as water and sewage systems. The Judge concluded that none of the land was used as a bona fide trade and manufacturing site. Seldon H. Klinke, 7 IBLA 83, 110-113 (1972).

[1, 2] Appellant's arguments respecting the trade and manufacturing site vis-a-vis the State selection application and any rights which might inure to persons in appellant's position by way of Klinke's prior claim were fully addressed by this Board in John W. Eastland, 24 IBLA 240 (1976). We there held that any right under a notice of location required by 43 U.S.C. § 687(a) (1970) is personal to the party filing the notice and no other person is entitled to any rights under that notice. We stated:

> Rights to a trade and manufacturing site, headquarters site, or homesite claim are gained by actual occupancy and settlement, not by mere filing of an application. Id. Since Klinke's claim has already been declared void, Seldon H. Klinke [7 IBLA 83, (1972)], we do not have to reach the question of what type of occupancy under a notice of location required by 43 U.S.C. § 687a-1 (1970), makes land no longer "vacant, unappropriated and unreserved," for the purposes of an Alaska State selection. See Fred J. Rand, A-30228 (March 26, 1965); Smith v. Crocker, A-26189 (May 28, 1951). . . . A trade and manufacturing site, homesite, or headquarters site notice of location, not supported by actual settlement and occupancy authorized by the Act, does not change the status of the public

> lands. Vernard E. Jones, 76 I.D. 133, 137 (1969); Peter Pan Seafoods, Inc. v. Shimmel, [72 I.D. 242 (1965)]; Clayton E. Racca, [72 I.D. 239 (1965)]; but cf. United States v. Foresyth, 15 IBLA 43, 54 (1974). Despite Klinke's notice of location, when Alaska filed its state selection on October 11, 1962, that action had the effect of segregating the land from appropriation based upon application or settlement and location. 43 CFR 2627.4(b). See also Margaret L. Klatt, [23 IBLA 59 (1975)]. [Footnote omitted].

Thus, appellant can claim no rights based on Klinke's notice of location.

[3] We need not address appellant's use and occupancy after 1964. By virtue of Alaska's selection application in 1962, the land was thereafter closed for initiation of rights under the Native Allotment Act at all times during the period from 1962 to the revocation of the Allotment Act on December 18, 1971, by section 18 of the Alaska Native Claims Settlement Act, supra. See Norman Opheim, 41 IBLA 338 (1979); 43 CFR 76.16 2/ (1962).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

2/ This regulation reads as follows:

"§ 76.16 Segregative effect of applications.

"Lands desired by the State under the regulations of this part will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the State filed its application for selection in the appropriate land office properly describing the lands as provided in § 76.9(a) (3), (4), and (5). Such segregation will automatically terminate unless the State publishes first notice as provided by § 76.17 within 60 days of service of such notice by the appropriate officer of the Bureau of Land Management."